84-655

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

MOSES HANNA,

Petitioner

VS.

RAILROAD RETIREMENT BOARD,

Respondent

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE

THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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55 pp

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To The Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

MOSES HANNA, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on July 5, 1984

QUESTION PRESENTED FOR REVIEW

This case pertains to the interpretation of Section 3(h)(2) of the Railroad Retirement Act of 1974 (45 U.S.C 231b(h)(2)) as such Section may be effected by or effects Section 217(a) of the Social Security Act (42 U.S.C. 417(a)). The former Section provides for a determination of a benefit contingent upon a retiree being permanently insured under the Social Security Act "as of" a certain date. The Social Security Act Section

provides that credit for military service time during World War II is to be allowed in determining insured status under that Act, but also provides that such Section allowing such credit shall not apply if such military service time is used for another federal benefit.

The question presented for review is whether the "as of" determination required by the Railroad Retirement Act requires that the applicability of the military service time provision of the Social Security Act be determined utilizing the factual circumstances existing at the determination date, and more specifically, whether the fact that the Petitioner some twenty years after the determination date utilized his military service time for another federal benefit should cause such time not to be considered as available for use "as of" the determination date especially in light of the fact that the

calculation of the benefit to be determined "as of" the date does not involve the dual use of such time.

PARTIES TO THE PROCEEDINGS IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

There are no parties to such proceeding other than those shown in the caption.

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LEGISLATIVE HISTORY

1974 U. S. Code Cong. and Adm. News 5702, 5711 16

REPORT OF THE OPINION BELOW

The Opinion of the U. S. Court of Appeals for the Third Circuit is reported at 738 F.2d 618.

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit (Appendix infra, page A-1) was entered on July 5, 1984. A timely petition for rehearing was denied on August 1, 1984 (Appendix infra, page A-25). The jurisdiction of the Supreme Court is invoked under 28 U.S.C 1254(1).

STATUTES INVOLVED

Section 3(h)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(h)(2)): See Appendix, infra, page A-26.

Section 217(a) of the Social Security Act (42 U.S.C. 417(a)): See Appendix, infra, page A-29.

STATEMENT OF THE CASE

This case was instituted in the Court below as a Petition for Review of an Agency Order. Specifically, the Petitioner complained of the interpretation by the Railroad Retirement Board of a statute. The statue, 45 U.S.C. 231b(h)(2), provides benefits for retirees who have "(i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which he last rendered service as an employee to an employer, ..."

In determining Petitioner's vested status under the Social Security Act the Board failed and refused to consider and give credit for Petitioner's military service during World War II, claiming that because this service had been the basis in part of the Petitioner's Civil Service

annuity, it was not creditable under the Social Security Act and that therefore Petitioner was not vested on December 31, 1958 (the applicable date). Petitioner contended that his vested status should be determined as of said date without regard to any subsequent allocation or uses of his military service time and that such determination would result in his being vested in accordance with the disputed statute resulting in his entitlement to the benefits of 45 U.S.C. 231b(h)(2).

Petitioner, Moses Hanna, commenced this action on May 20, 1982 by filing an Appeal (dated May 10, 1982) from the initial decision of the Bureau of Retirement Claims. On July 7, 1982, the Appeals Referee upheld the initial decision of the Bureau of Retirement Claims, finding that Petitioner's annuity had been properly computed and that the Petitioner did not meet the requirements

of and was not entitled to the benefits of Section 3(h) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(h)).

On October 18, 1982 Petitioner appealed the decision of the Appeals Referee to the Railroad Board specifically complaining of the Referee's failure to take into account Petitioner's military service during World War II in determining his vested status under the Social Security Act as of December 31, 1958, resulting in the denial of the benefits of Section 3(h)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(h)(2)).

On or after January 6, 1983 Petitioner received the decision of the Board, denying his appeal and finding that he was not entitled to the benefits of the aforementioned Section 3 (h)(2) and that his annuity had been correctly computed.

On December 8, 1983, Petitioner filed a Petitioner for Review in the United

States Court of Appeals for the Third Circuit complaining of this decision.

On July 5, 1984, said Court denied Petitioner's Petition for Review issuing a Memorandum Opinion stating that ..."The regulations under the Social Security Act make it abundantly clear that credit for military service under that Act is not permissible when another federal benefit is payable based in whole or in part on such credit."

A timely Petition for Rehearing was denied on August 1, 1984.

There has never been a dispute as to the facts in this case. Nor has it ever been disputed that, allowing Petitioner's interpretation of the Statues involved, he would be qualified for the benefit provided by 45 U.S.C. 231b(h)(2). Such facts are as follows:

1] Petitioner last rendered service to the railroad in 1958.

2] Petitioner on December 31, 1958 had 25 quarters of Social Security coverage without regard to his military service.

3] Petitioner served honorably in the United States Army from May 29, 1942 through October 10, 1945.

4] Petitioner's required number of quarters under the Social Security Act is 28.

5] Petitioner had completed at least 10 years of Railroad Service prior to January 1, 1975.

6] Petitioner had at least 40 quarters of coverage under the Social Security Act without regard to his military service, at retirement.

7] Petitioner prior to 1951 had $5,280.79 of accrued Social Security wages.

8] Petitioner between 1951 and December 31, 1958 earned two quarters of Social Security coverage.

9] In 1981 Petitioner retired from the United States Postal Service and utilized his military service time toward his Postal Service pension.

The Petition for Review in the United States Court of Appeals for the Third Circuit was filed pursuant to 45 U.S.C. 231g, which statute provides for proceedings for review of decisions under the Railroad Retirement Act of 1974 pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.), but extending the appeal period to one year. The latter Act (specifically, 45 U.S.C.

355(f)) provides for appeals in the form of a Petition for Review to the U. S. Appellate Court exercising jurisdiction where the aggrieved party resides.

ARGUMENT

Certiorari should be granted in this case because the issue disputed presents an opportunity to resolve whether a factual event occurring after a retrospective date determined by law is to be taken into account with regard to a statute (the Social Security Act provision in question) which apparently has no reported history of being applied by a Court to effect a retrospective determination required by another statute.

Additionally, the specific interpretation upheld by the Court of Appeals may effect other World War II veterans who have been employed by a railroad and are qualified under the Railroad Retirement Act of 1974.

The present case is clear cut as to the facts, about which there has been no dispute, and as to the issue involved.

The plain meaning of 45 U.S.C. 231b(h)(2), requiring a determination "as of", in the present case, December 31, 1958, is that such determination be made under the factual circumstances existing at that time. Although the Railroad Retirement Act provides for the use of the Social Security Act as amended from time to time (45 U.S.C. 231(n)), it does not provide for retrospective application of changes in factual circumstances. The Respondent Railroad Retirement Board below, and apparently the Court below, accepted Petitioner's contention, reiterated here, that the term "as of" means "as if it were" or "at that point". This contention is based on two (2) cases, Horowitz v. New York Life Insurance Co., 80 F.2d 295 (9th Cir., 1935) and

United States v. Murro-Van Helms Company, 243 F.2d 10 (5th Cir., 1957), the Legislative history of the Railroad Retirement Act of 1974, at 1974 U. S. Code Cong. and Adm. News 5702, page 5711 and the plain common sense meaning of the term.

The Social Security Act provision, 42 U.S.C. 417(a)(1)B, quoted at length at Appendix p. A-29, relied on to deny Petitioner's insured status as of December 31, 1958 and thus Petitioner's entitlement to the benefits of 45 U.S.C. 231b(h)(2), to Petitioner's knowledge, has no reported history of being applied by a Court except with regard to current Social Security benefits. It appears from the cases, rules and regulations cited by the Respondent Railroad Retirement Board, below, that its application by the Social Security Administration and the courts has been limited to situations where an

individual is seeking to apply military service time for current Social Security benefits. This is not surprising since undoubtedly its primary, and perhaps exclusive, purpose, insofar as Social Security benefits are concerned, is its application to current benefits. Because the disputed provision of the Social Security Act was enacted long before the disputed provision of the Railroad Retirement Act of 1974, it is undoubtedly true that the former's affect on the latter was not considered at the time of the former provision's enactment.

Petitioner's contention is quite simple. The facts existing "as of" (or "as if it were" or "at that point") December 31, 1958, should govern in making the determination of Petitioner's insured status. Factual events occurring after such date should not be considered, including the fact that Petitioner

subsequently earned ample quarters to qualify under the Social Security Act.

Petitioner would also point out, as he did below, that Petitioner's interpretation of the statutes only enables him to qualify for a benefit.

Petitioner does not and, whatever the outcome of this case, will not receive any benefit under his Social Security pension relating to his military service time. A careful reading of the benefits which would accrue to Petitioner under the disputed statute, Section 3(h)(2) of the Railroad Retirement Act of 1974, reveals such benefit is based on the Petitioner's Railroad Employment and excludes amounts payable under the Social Security Act "as of", in the Petitioner's case, December 31, 1958. In short, the amount of the benefit payable to the Petitioner is not based on Social Security. The vested status under the Social Security Act "as

of" December 31, 1958 is used only as a qualifying or threshold requirement.

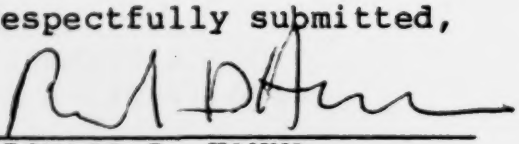
A careful reading of the Railroad Retirement Act of 1974 also reveals, despite the Board's contention below, that at least in one case Congress did in fact intend to allow credit for military service time even though such time had been used for another Federal benefit.

Section 3(i)(2) (45 U.S.C. 231b(i)(2)) and Section 2(h)(1) (45 U.S.C. 231a(h)(1)) provides that such military time may be credited even though used for another Federal benefit, allowing for a proportionate reduction however relating to such use. The last two cited sections do not directly affect the Petitioner but are cited here to show that under the subject Act Congress could and, in fact, did allow the use of military service even though such may have been used for another Federal benefit.

In the present case, the plain meaning of the words of the statute and of the statute itself require a determination be made at a time when Petitioner's military service time was fully available for credit and such credit would not result in a benefit payable the amount of which would be based on such military time.

Petitioner respectfully prays that a writ of certiorari be granted.

Respectfully submitted,



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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 83-3604

MOSES HANNA,

PETITIONER

VS.

RAILROAD RETIREMENT BOARD,

RESPONDENT

PETITION FOR REVIEW
RAILROAD RETIREMENT BOARD
(RRB DOCKET NO. A-194-01-6645)

SUBMITTED UNDER THIRD CIRCUIT RULE 12(6)
JUNE 22, 1984
(FILED JULY 5, 1984)

MEMORANDUM OPINION OF THE COURT

ALDISERT, Chief Judge.

Moses Hanna petitions for review of a decision of the Railroad Retirement Board which granted him certain benefits but denied him the full amount requested. Implicated here is an interpretation of §3(h)2 of the Railroad Retirement Act of 1974, 45 U.S.C §231b(h)(2). This provision is known as the "windfall" entitlement, and provides in relevant part:

> The amount of the annuity provided under subsections (a) and (b) of this section to an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently

> insured under the Social Security Act ... as of December 31 of the calendar year prior to 1975 in which he last rendered service as an employee to an employer, or as an employee representative ....

(Emphasis added). The sole issue is whether petitioner's military service time is to be credited in determining his entitlement to the benefits of §3(h)(2).

Petitioner contends that the operative language of the statute, i.e., the phrase "as of", is tantamount to "as if it were" or "at this point". The Board does not object to petitioner's interpretation of the literal meaning of the words "as of," nor to the judicial interpretations of those words, nor to the legislative history cited in support of petitioner's argument. Instead, the Board insists that military service cannot be used to give credit to two separate

federal benefits. Because Hanna has already used his military service as a basis of calculating a civil service pension the Board argues that it may not be used to get credit under §3(h)(2) of the Railroad Retirement Act. The Board relies on §271(a) of the Social Security Act, 42 U.S.C. §417(a), which states that military credit will not be applicable if "a benefit ... which is based, in whole or in part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States ...." The regulations under the Social Security Act make it abundantly clear that credit for military service other than that Act is not permissible when another federal benefit is payable based in whole or in part on such credit.

We are persuaded that the Board's interpretation of the Social Security Act

is proper. We have considered all other contentions of the petitioner. Accordingly, the petition for review will be denied.

A True Copy:

Teste:

Clerk of the United States Court
of Appeals
for the Third Circuit

RAILROAD RETIREMENT BOARD

Appeal of	§
	§ Railroad Retirement
	§ Act Claims Appeal
Moses Hanna	§ Docket No. 3000
R.R.B. No. A-194-01-6645	§
	§

The issue in this case is whether the appellant is receiving the correct annuity amount under the provisions of the Railroad Retirement Act of 1974.

LAW

Section 2(a)(1) of the Railroad Retirement Act (45 U.S.C. Section 231 2(a)(1)) provides annuities for individuals who have completed ten years of service and have filed applications and, in pertinent part:

> (iii) individuals who have attained the age of sixty-two and have completed less than thirty years of service, but the annuity of such individuals shall be reduced by 1/180 for each calendar month that he or

she is under age sixty-five when the annuity begins to accrue; * * *

Section 3 of the Act (45 U.S.C. Section 231(b)) outlines the computation of employer annuities and the requirements for entitlement to the "windfall" benefit. The parts of this Section are that pertinent to this appeal are cited below:

Section 3(a)(1);

> The annuity of an individual under Section 2(a)(1) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the old-age insurance benefit or disability insurance benefit to which such individual would have been entitled under the Social Security Act if all of his or her service as an employee after December 31, 1936, had been

included in the term "employment" as defined in that Act.

Section 3(h)(2) outlines the requirements for "windfall" entitlement:

> The amount of the annuity provided under subsections (a) and (b) of this section to an individual who (A) will not have met the conditions set forth in subclause (i), (ii) or (iii) of clause (A) of subdivision (1) of this subsection, but (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which he last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which

such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment

under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this Act, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this Act and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had wages and self-employment income

derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this Act, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this Act and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1,

1975, if such service as an employee had been included in the term "employment" as defined in that Act.

Section 3(m)

The annuity of any individual under subsection (a) of this section for any month shall be reduced, but not below zero, by the amount of the monthly benefit payable to that individual for that month under title II of the Social Security Act.

Section 217(a) of the Social Security Act (42 U.S.C. §417(a)) states as follows:

(a)(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after August 1950, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any World

War II veteran, and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually aid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States during World War II. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if--

(A) A larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, period payments) which is based, in whole or in

part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) of this paragraph shall not apply in the case of any month benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to section 415(f) of this title) of the individual on whose wages and

self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States, that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the

Secretary shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or

naval service during World War II shall, at the request of the Secretary, certify to him, with respect to any veteran such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

PROCEDURAL HISTORY

On January 19, 1981, the appellant filed an application for an annuity under the provisions of the Railroad Retirement Act wherein he stated that he was born on May 27, 1917, that he had worked for the Pennsylvania Railroad as a fireman from 1946 to April 30, 1958, and for the United States Postal Service as a postmaster from 1958 to January 16, 1981. The record shows that the appellant was awarded a benefit under the provisions of the Social Security Act on February 23, 1981, effective January 1, 1981, and an annuity

at a partial rate on March 2, 1981, adjusted to the final rate on June 1, 1981, under the provisions of the Railroad Retirement Act effective January 17, 1981. On July 6, 1981, the appellant requested our district office in Pittsburgh, Pennsylvania to furnish him with a breakdown of his annuity computation.

On May 20, 1982, the appellant filed an appeal from the decision of the Bureau of Retirement claims in which he requested a hearing.

Section 260.4(g) of the regulations of the Board (20 CFR Chapter II) provides:

> Where the referee finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written

argument in support of the claim but no oral hearing shall be held.

In a letter dated June 15, 1982, the referee informed the appellant that, upon preliminary review of his case, she had found that there was no dispute regarding the material and relevant facts in the case and therefore under the regulation cited above no hearing would be held. The appellant was afforded a period of 15 days to submit any additional evidence or argument before the decision would be rendered based upon the evidence currently on record. No additional evidence or argument was filed. The referee upheld the decision of the bureau of Retirement Claims in a decision dated July 9, 1982. This appeal followed.

EVALUATION OF EVIDENCE

The primary issues raised by the appellant in this appeal are 1) the reduction of his railroad retirement

annuity by the amount of his social security benefit and 2) the fact that the Bureau of Retirement claims has determined that he is not entitled to a "windfall" computation in his annuity.

Prior to the enactment of the Railroad Retirement Act of 1974, employees who had worked a sufficient length of time under both Acts received benefits from the Railroad Retirement Board and the Social Security Administration with only a slight reduction in the railroad retirement annuity based on their entitlement to a social security benefit. This caused a serious financial drain on the Railroad Retirement Funds and, in addition, penalized those employees who had been in a railroad service all of their working lives. The Railroad Retirement Act of 1974 was enacted by the Congress to preserve the financial stability of the fund and to reduce those inequities.

Under the Railroad Retirement Act of 1974, the employee retirement benefit formula was restructured to a two-tier format. The first tier is computed under the social security benefit formula, counting all of the employee's railroad and social security credits combined. Since social security credits are used in the computation, section 3(m), as quoted above, was incorporated into the 1974 Act requiring that the Tier I benefit be reduced by the full amount of any monthly benefit payable under Title II of the Social Security Act. Tier II is based solely on the employee's railroad service and earnings.

For employees who meet the qualification requirements as specified in section 3(h)(2) of the Act (quoted above), a third component known as the "windfall" amount was added to the computation. This amount was designed to partially restore the

reduction made in Tier I because of entitlement to social security benefits. To receive the windfall amount an employee must have been insured under the Social Security Act by the last day of the year in which the employee last worked in the railroad industry. The appellant argues that with the inclusion of his military service he was insured under the Social Security Act by December 31, 1958, the last day of the year in which he last worked in the railroad industry. The appellant served in the armed forces from May 29, 1942 through October 10, 1945. This military service would ordinarily be creditable under the Social Security Act. However, since this same military service is the basis, in part, of the appellant's civil service annuity, another benefit provided under the laws of the United States, the military service is not creditable under the Social Security Act.

Therefore, the appellant was not insured under that Act by December 31, 1958.

FINDINGS

The Board has reviewed the record in the appeal of Moses Hanna and has considered the argument and evidence contained therein. The Board finds that the appellant's Tier I amount was computed properly with his social security benefit deducted as prescribed by section 3(m) of the Railroad Retirement Act.

The Board further finds that the appellant does not meet the conditions for payment of the "windfall" amount as set forth in section 3(h)(2) of the Act.

The Board finds that the appellant's railroad retirement annuity has been correctly computed as prescribed by the Railroad Retirement Act of 1974.

The appeal is denied.

Petitioner note: this decision is undated but mailed to Petitioner under letter dated January 6, 1983.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 83-3604

MOSES HANNA, Petitioner

vs.

RAILROAD RETIREMENT BOARD, Respondent

(RRB Docket No. A-194-01-6645)

ORDER

The petition for panel rehearing filed by petitioner in the above entitled case having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the petition for rehearing before the original panel is denied.

BY THE COURT,

CHIEF JUDGE

NOTE: Filed August 1, 1984

Railroad Retirement Act of 1974 (45 U.S.C. §§ 231-231u) Section 3(h)(2); 45 U.S.C. § 231b(h)(2) .....

(2) The amount of the annuity provided under subsections (a) and (b) of this section to an individual who (A) will not have met the conditions set forth in subclause (i), (ii) or (iii) of Clause (A) of subdivision (1) of this subsection, but (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which he last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age

65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this subchapter, exceeds (D) the primary

insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this subchapter and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

Social Security Act (42 U.S.C. §§ 301-1396) Section 217(a); 45 U.S.C. § 417(a)....

§417. Benefits for veterans; definitions; determination of benefits

(a)(1) For purposes of determining the entitlement to and the amount of any monthly benefit for any month after August 1950, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any World War II veteran, and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States during World War II. This subsection shall not be applicable in

the case of any monthly benefit or lump-sum death payment if --

(A) A larger such benefit or payment, as the case may be, would be payable without its application; or

(B) A benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to section 415(f) of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by

some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be

required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part on military or naval service during World War II shall, at the request of the Secretary, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.